

**FEMA Needs to Improve
Guidance and Oversight for
the Presidential Residence
Protection Assistance Grant**





OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

March 03, 2021

MEMORANDUM FOR: Robert J. Fenton, Jr.
Senior Official Performing the Duties of FEMA
Administrator
Federal Emergency Management Agency

FROM: Joseph V. Cuffari, Ph.D. **JOSEPH V**
Inspector General **CUFFARI** Digitally signed by
JOSEPH V CUFFARI
Date: 2021.03.03 08:08:44
-05'00'

SUBJECT: *FEMA Needs to Improve Guidance and Oversight for the
Presidential Residence Protection Assistance Grant*

Attached for your action is our final report, *FEMA Needs to Improve Guidance and Oversight for the Presidential Residence Protection Assistance Grant*. We incorporated the formal comments provided by your office.

The report contains four recommendations aimed at improving FEMA's oversight of the Presidential Residence Protection Assistance Grant. Your office concurred with three recommendations and did not concur with one recommendation. Based on information provided in your response to the draft report, we consider recommendations 1 and 2 open and unresolved. As prescribed by the Department of Homeland Security Directive 077-01, *Follow-Up and Resolutions for the Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until your response is received and evaluated, the recommendations will be considered open and unresolved.

Based on information provided in your response to the draft report, we consider recommendations 3 and 4 open and resolved. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions and of the disposition of any monetary amounts.



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Please send your response or closure request to
OIGAuditsFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Thomas Kait, Acting Assistant Inspector General for Audits, at (202) 981-6000.

Attachment



DHS OIG HIGHLIGHTS

FEMA Needs to Improve Guidance and Oversight for the Presidential Residence Protection Assistance Grant

March 3, 2021

Why We Did This Audit

In each of 2017 and 2018, Congress appropriated \$41 million to FEMA for the PRPA grant. We conducted this audit to determine whether FEMA ensured state and local law enforcement agencies accounted for and expended PRPA grant funds in accordance with Federal laws, regulations, and FEMA and United States Secret Service guidelines.

What We Recommend

We made four recommendations to improve FEMA's management of the PRPA grant.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

The Federal Emergency Management Agency (FEMA) did not ensure state and local law enforcement agencies expended FEMA's Presidential Residence Protection Assistance (PRPA) grant funds in accordance with Federal regulations and FEMA guidelines. Specifically, FEMA's Grant Programs Directorate (GPD) reimbursed the New York City Police Department (NYPD) for unallowable overtime fringe benefits. This occurred, in part, because GPD did not evaluate NYPD's increase in fringe benefit rates, request justification for the rate change, or establish comprehensive guidance for the PRPA grant. Additionally, GPD did not provide effective oversight to manage the PRPA grant during its application review and verification process by assigning limited, inexperienced staff whose work received minimal supervisory review.

As a result, GPD improperly reimbursed NYPD \$6.9 million in unallowable fringe benefit costs. Additionally, FEMA may not be able to ensure taxpayer funds are spent in the best interest of the government.

FEMA Response

FEMA concurred with recommendations 2 through 4, but did not concur with recommendation 1.



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Background

The Federal Emergency Management Agency (FEMA) delivers financial assistance through annually recurring and incident-specific grants. These grant programs are critical to support state, local, tribal, and territorial governments, first responders, survivors, and communities in developing and sustaining capabilities to accomplish FEMA's mission. Between fiscal years 2008 and 2017, FEMA provided nearly \$100 billion in financial assistance in grants to state, local, tribal, and territorial partners.

Under the 2017 and 2018 *Department of Homeland Security Appropriations Acts*,¹ Congress appropriated \$41 million annually for FEMA to reimburse state and local law enforcement agencies for extraordinary law enforcement personnel costs for protection activities directly and demonstrably associated with any non-governmental residence of the President. Although the United States Secret Service (Secret Service) is responsible for day-to-day protection of the President and his family, state and local law enforcement agencies also play a significant role. Specifically, state and local law enforcement agencies assist the Secret Service with security measures and provide support for travel by the President or his family. As shown in Figure 1, the New York City Police Department (NYPD) provides uniformed protective patrols, vehicle and pedestrian screening checkpoints, and physical security barriers at Trump Tower and the surrounding area to assist the Secret Service in carrying out its mission.



Figure 1. NYPD Security outside of Trump Tower in New York City

Source: DHS Office of Inspector General (OIG) photo

¹ Public Law No. 115-31, *Consolidated Appropriations Act, 2017, Division F – Department of Homeland Security Appropriations Act, 2017*, Title V, Section 544(a); Public Law No. 115-141, *Consolidated Appropriations Act, 2018, Division F – Department of Homeland Security Appropriations Act, 2018*, Title V, Section 534(a).



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FEMA's Presidential Residence Protection Assistance (PRPA) grant included three non-governmental residences approved for reimbursement: Trump Tower in New York City, New York; Mar-a-Lago in Palm Beach, Florida; and Trump National Golf Club in Bedminster, New Jersey. Under the PRPA grant, operational and backfill overtime activities are the only costs eligible for reimbursement, including direct labor costs and related fringe benefit costs. Fringe benefits include employer contributions such as pension, health insurance, social security, Medicare, workers compensation, and unemployment insurance. Overtime fringe benefit rates are typically lower than regular time fringe benefits because categories such as leave, disability insurance, and health insurance are not dependent on hours worked and do not change if the employee works overtime hours.

FEMA's Roles and Responsibilities for PRPA Administration

FEMA's Grant Programs Directorate (GPD) is responsible for managing and overseeing the PRPA grant, including administering and accounting for grant funding in accordance with FEMA Manual 205-0-1, *Grants Management* (Grants Manual), Federal laws and regulations, Office of Management and Budget circulars, and Federal appropriations law principles. The Grants Manual provides policies and procedures for proper administration of grant funding. FEMA's Office of Policy and Program Analysis is responsible for managing FEMA's policy development by facilitating the overarching policy review process, while FEMA program offices are charged with developing and writing policies. In 2019, FEMA formally delegated responsibility for all grant policy development and management to GPD.

FEMA issues notices of funding opportunity (NOFO) for non-disaster grants to provide information to the public about available funding, the grant program, and the processes and actions that lead up to award of non-disaster grants. The PRPA NOFO describes the required documents (investment narrative, detailed budget spreadsheet, disclosure of pending applications, and certifications) grantees must submit to receive reimbursement. Specifically, FEMA required grantees to provide a detailed budget spreadsheet with information about the hours and costs associated with law enforcement personnel. The spreadsheet includes position/rank, compensation rate, overtime compensation rate, fringe benefits, dates overtime worked, total number of hours overtime worked, total amount of overtime cost requested, and allocation priority. GPD also established three priority allocation classifications for providing funding to law enforcement agencies. GPD requires grantees to assign a classification to each cost line item when operational and backfill overtime costs were incurred:

- Priority 1: Assigned when the President, First Lady, or their minor child was at the designated residence.



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- Priority 2: Assigned when transporting the President, First Lady, or their minor child to and from the designated residence within the state.
- Priority 3: Assigned when maintaining the security of the designated residences in the absence of the President, First Lady, or their minor child.

PRPA Awards for Fiscal Years 2017 and 2018

The FY 2017 and 2018 PRPA grants covered the periods of January 21, 2017 through September 30, 2017, and October 1, 2017 through September 30, 2018, respectively. GPD awarded \$40.9 million in funding to 9 grantees for FY 2017, and awarded \$37.8 million to 10 grantees for FY 2018. Table 1 identifies the funds GPD reimbursed to state and local law enforcement agencies for FYs 2017 and 2018.

Table 1. PRPA Grant Funds Reimbursed to State and Local Law Enforcement Agencies

Grantee	FY 2017	FY 2018
Trump Tower Residence		
New York City Police Department	\$36,427,909	\$31,124,825
Mar-a-Lago Residence		
Palm Beach County Sheriff's Office (PBCSO)	3,293,988	5,623,392
Town of Palm Beach	71,270	57,614
West Palm Beach Police Department	63,164	111,063
Broward County Sheriff's Office	54,916	0
Trump National Golf Club Residence		
Township of Bedminster	54,077	50,050
County of Somerset	579,088	509,646
New Jersey Department of Law & Public Safety	281,822	186,683
Town of Morristown	30,722	30,854
Town of Hanover	0	10,123
County of Morris	0	55,938
Total Reimbursement	\$40,856,956	\$37,760,188

Source: DHS OIG analysis of FEMA and grantee data

The 2017 and 2018 DHS Appropriations Acts require DHS OIG to audit reimbursements FEMA made to state and local law enforcement through the PRPA grant. Accordingly, we conducted this audit to determine whether FEMA ensured state and local law enforcement agencies accounted for and expended FEMA's grant for protection of the President's non-governmental residences according to Federal regulations and FEMA and Secret Service guidelines.



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Results of Audit

FEMA Did Not Ensure Grantees Expended PRPA Grant Funds in Accordance with Federal Laws and FEMA Guidelines

Under its FY 2017 and 2018 PRPA grants, FEMA reimbursed NYPD for \$6.9 million in unallowable fringe benefit costs. Specifically, we determined, for New York City's FYs 2018 and 2019,² NYPD's fringe benefit rates included health insurance and supplemental welfare benefits — unallowable costs under the PRPA grant. According to FEMA's Grants Manual,³ in order for a claimed cost to be allowable it must comply with all terms and conditions of the award, including applicable laws, regulations, program requirements, and cost limitations established in the Code of Federal Regulations (C.F.R.).⁴ The Grants Manual also states that claimed costs must be (1) necessary and reasonable for achieving the purposes or objectives of the specific award, and (2) allocable to the particular award.⁵ However, the health insurance and supplemental welfare benefit cost categories of NYPD's fringe benefit rates were not allocable to overtime labor costs and were not incurred as a result of NYPD's operational overtime activities on the PRPA grant. As such, these costs were not eligible for reimbursement under this grant.

GPD Reimbursed NYPD's Overtime Fringe Rate at a Regular Fringe Rate

Prior to July 2017, NYPD used separate regular time and overtime fringe benefit rates to reimburse costs for its civilian and police department employees. In July 2017, at the beginning of the new city fiscal year, NYPD eliminated its overtime fringe benefit rates and exclusively used regular time fringe benefit rates for the Federal FYs 2017 and 2018 PRPA grants. When it changed its methodology to a regular time fringe benefit rate, NYPD began including health insurance and supplemental welfare benefits, although the costs of these benefits do not increase with overtime. Appendix C illustrates the cost categories, the fringe benefit rates that NYPD used, and the allowability of the cost categories. This change in rates resulted in FEMA reimbursing approximately \$6.9 million in unallowable fringe benefits for FYs 2017 and 2018. Table 2 provides the calculation of the unallowable funds NYPD submitted for city FYs 2018 and 2019 and FEMA reimbursed under the

² The effective period for NYPD's fringe benefit rates coincides with its fiscal year, which starts on July 1 and ends on June 30.

³ FEMA Manual 205-0-1, *Grants Management*, Chapter 5, Section 5.2, *Cost Principles Compliance*.

⁴ 2 C.F.R. Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*.

⁵ 2 C.F.R. § 200.403(a).



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PRPA grant. Appendix D provides a more detailed breakout of grantees audited and questioned costs.

Table 2. Unallowable Fringe Benefits Reimbursed by FEMA

New York City Fiscal Year	Labor Category	Claimed Overtime	Unallowable Overtime
FY 2018	Civilian	\$ 226,759	\$ 54,649
FY 2018	Police	19,461,326	5,620,431
FY 2019	Civilian	12,570	2,960
FY 2019	Police	4,245,333	1,258,317
Total Unallowable Reimbursement:			\$6,936,357

Source: DHS OIG analysis of NYPD data

FEMA Did Not Evaluate NYPD’s Rate Increase and Needs Comprehensive Guidance for Reimbursable Fringe Benefits

FEMA reimbursed NYPD for these unallowable costs in part because GPD did not evaluate NYPD’s increase in fringe benefit rates or request justification for the rate change, as required by policy. According to the Grants Manual,⁶ GPD program staff are required to evaluate all increases in grantees’ fringe benefit rates over the life of the grant award. The staff are also required to request justification for the rates grantees used, including changes in rate methodology. Nevertheless, GPD program staff did not perform either of the required steps. According to GPD officials, the reason they did not evaluate the new rates was because NYPD used a designated Federal agency to negotiate the fringe rates.⁷ In this case, GPD assumed the rates the U.S. Department of Health and Human Services negotiated were acceptable and included only allowable costs. However, NYPD negotiated an *indirect* fringe benefit rate with Health and Human Services, which FEMA approved for a grant that allowed only overtime costs and other *directly* related costs.

Direct costs are those identified specifically with a particular cost objective, such as a Federal award. Typical costs charged directly to a Federal award are the compensation of employees who work on that award and their related fringe benefit costs.

Indirect costs are incurred for a common or joint purpose benefiting more than one cost objective.

Source: 2 C.F.R. § 200.413(a) (b) and § 200.56)

⁶ FEMA Manual 205-0-1, *Grants Management*, Chapter 3, Section 3.2, *Application Submission and Review*.

⁷ NYPD negotiated an indirect rate with a “cognizant agency,” or Federal agency that is responsible for reviewing, negotiating, and approving indirect cost proposals on behalf of all Federal agencies, see 2 C.F.R. § 200.19.



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FEMA also reimbursed NYPD for unallowable costs because the Grants Manual does not include sufficient guidance related to fringe benefits, despite previous OIG findings regarding other FEMA grants, as shown in Appendix F. GPD uses the Grants Manual as a guide to properly administer and account for grant funds, and it states GPD staff should ensure grantees provide justification for the fringe rates used. The manual does not include guidance to assist staff with determining what fringe benefit cost categories are applicable to overtime labor for reimbursement. Although FEMA posted DHS' Office for Domestic Preparedness (ODP)⁸ fringe benefit guidance on its public website, GPD officials stated the guidance does not apply to this grant and has been superseded. However, when we requested the guidance that replaced the ODP bulletin, GPD did not provide any further documentation.

GPD Did Not Provide Effective Oversight to Manage the PRPA Grant

GPD did not conduct a complete review of application packages or communicate with Secret Service to ensure grant reimbursements were appropriately linked to the President or his family's travel. Further, FEMA assigned limited, inexperienced staff and provided inadequate supervisory review of the PRPA grant.

Application Review and Verification

As part of its oversight, GPD is responsible for validating required content in the grant application and ensuring proper execution of the grant award. The PRPA NOFO requires grantees to submit an investment narrative, detailed budget spreadsheet, disclosure of pending applications, and certifications for which reimbursement is requested. Grantees must also include priority allocation codes to identify whether the overtime listed was for protecting the President and his family while at the residence (priority one), transportation to or from the residence (priority two), or protecting the residence in the President's and family's absence (priority three).

However, GPD did not validate the grant applications for accuracy. We found for the 2017 and 2018 PRPA grant awards, GPD approved 40 reimbursements for which grantees listed inaccurate priority allocations. In nine of those reimbursements, GPD paid \$9.4 million although the grantee incorrectly listed the President as being in residence. Although GPD is not currently using priority allocations to reimburse funds, GPD officials indicated that if future

⁸ ODP Information Bulletin No. 161, *Inclusion of Pension Costs as Fringe Benefit in Reimbursable Overtime Costs*, dated April 25, 2005. ODP was originally part of the DHS Office of the Secretary, managing and administering all preparedness assistance programs prior to that function and the office being transferred to FEMA GPD.



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applications exceed the appropriated amount of \$41 million, FEMA may only reimburse priority one allocations. By not verifying priority allocations, GPD also risks awarding PRPA grant funds to grantees for ineligible costs unrelated to protecting the President's non-governmental residences.

Also, GPD acknowledged it did not require or assign staff to communicate with the Secret Service to verify application information. Although GPD is required to validate grant application accuracy, a GPD official stated GPD does not have access to the President's or his family's travel schedule. Despite this, GPD acknowledged it did not coordinate with the Secret Service while reviewing the grant applications to verify the information submitted was accurate and the reimbursements were allowable. According to GPD, its last communication with Secret Service was in 2017 while drafting the NOFO for the first grant. When managing other DHS grants that partner with different DHS components, GPD established a Memorandum of Understanding with the DHS component responsible for administering the grant. However, GPD did not have such an agreement with Secret Service. In November 2019, the audit team provided GPD a Secret Service contact to help review priority allocations. In December 2019, GPD began communicating with that individual to informally coordinate the review of priority allocations for FY 2019.

Furthermore, GPD staff's sampling to validate reimbursements was not thorough or consistent. In its sample, GPD did not validate the accuracy of all information required to support the application. For example, GPD accepted timesheets for one grantee that did not include payroll information to validate both the hours and the hourly rate. Additionally, it did not establish a consistent methodology for reviewing PRPA grant applications. Instead, GPD used different sampling methodologies for different grantees, and used different sampling methodologies each fiscal year, as well. To illustrate, GPD staff requested documentation to generally support reimbursement for each selected law enforcement official for the entire fiscal year, rather than individual transactions by specific date. However, a specific officer may not be consistently assigned to work on the President's protection. As a result, GPD's sample sizes varied widely. For example, NYPD's 2017 sample of 30 law enforcement officials incorporated 163 transactions, whereas the 2018 sample of 21 law enforcement officials resulted in a sample of only 68 transactions.

Limited, Inexperienced Staff Had Minimal Supervisory Review

GPD did not ensure it assigned the appropriate personnel with the necessary subject matter expertise to review the grant applications. According to GPD, in 2017 and 2018, it assigned only one employee to review all grant applications, examine supporting documentation, and communicate with state and local governments. In fact, GPD had a different PRPA program analyst review applications each year of the PRPA grant. These limitations caused challenges



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and delays obtaining audit documentation. For example, during our audit, GPD did not provide the necessary documentation that we requested regarding award discrepancies. It was not until after our audit fieldwork concluded that FEMA provided us the information. FEMA explained the delay was because the program analyst involved in day-to-day management of the grant was not a subject matter expert regarding GPD's grants management system of record. GPD management acknowledged that without subject matter experts, FEMA had a "single point of failure" regarding management of this grant, and that FEMA has since taken action to resolve this issue. FEMA officials stated that, in FY 2020, it redesigned its PRPA application review to include staff from the Preparedness Grants Division and the Award Administration Division with the financial and sampling expertise needed, thereby eliminating the problem of having the knowledge of an entire grant program reside with a single person.

In addition to having only one analyst review the applications each year, GPD officials performed limited supervisory review of the staff's work. Ongoing monitoring through regular management and supervisory activity should be built into operations.⁹ However, staff did not review all eight items on the grantee's submitted detailed budget spreadsheet required per the NOFO for the PRPA grant, and we could not identify any supervisory review to ensure the accuracy of the required content in the grantee application packages. We also could not identify any supervisory review of the analyst's sampling results or selected methodology.

Conclusion

GPD improperly reimbursed the NYPD \$6.9 million in PRPA overtime fringe benefit costs. Past OIG reports highlighted similar issues. Since 2011, DHS OIG has issued five reports identifying weaknesses where FEMA reimbursed unallowable fringe benefit costs (see Appendix F). FEMA has yet to develop guidance to correct these continuing concerns. FEMA should apply lessons learned from our past audit reports to better manage the PRPA grant. Without comprehensive guidance and effective oversight to ensure applications are reviewed and verified by experienced, supervised staff, GPD may not be able to ensure taxpayer funds are spent in the best interest of the government.

Recommendations

Recommendation 1: We recommend the Assistant Administrator for FEMA Grant Programs Directorate disallow \$6,936,357 in overstated fringe benefit costs and ensure fringe benefits are properly calculated and applied.

⁹ *Standards for Internal Controls in the Federal Government*, U.S. Government Accountability Office, GAO-14-704G, September 2014.



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Recommendation 2: We recommend the Assistant Administrator for FEMA Grant Programs Directorate develop guidance on how to determine whether categories of fringe benefits related to overtime direct labor are eligible for reimbursement.

Recommendation 3: We recommend the Assistant Administrator for FEMA Grant Programs Directorate coordinate with Secret Service to develop a Memorandum of Understanding to validate allocation priorities specific to the Presidential Residence Protection Assistance grant.

Recommendation 4: We recommend the Assistant Administrator for FEMA Grant Programs Directorate develop and implement internal controls for managing the Presidential Residence Protection Assistance grant to include at a minimum:

- integrating staff with subject matter expertise to conduct complete review of all required documentation and develop a consistent sampling methodology; and
- establishing operational guidance specific to the grant, incorporating supervisory review of staff evaluations of grant submissions to ensure compliance.

Management Comments and OIG Analysis

FEMA concurred with three of our recommendations and did not concur with one recommendation. FEMA did not concur with our finding that it reimbursed NYPD for \$6.9 million in excess fringe benefits. In its response, FEMA stated that NYPD used an indirect rate approved by the U.S. Department of Health and Human Services, its cognizant agency, and that FEMA is required to accept this rate by Federal regulation as FEMA did not identify any exceptions. FEMA also stated that because Congress did not define the term “extraordinary” in the appropriations acts authorizing the PRPA grant, FEMA has authority to make a reasonable interpretation about the statute. Although it provided no documentation during the audit, FEMA asserted the word “extraordinary” permits reimbursing health and supplemental welfare benefits when the recipient is required to provide them by law and has an approved indirect cost rate agreement.

We disagree with FEMA’s conclusion. FEMA reimbursed NYPD for a rate that it negotiated with the cognizant agency for indirect costs. NYPD developed its negotiated indirect rate for fringe benefits by averaging regular and overtime fringe benefits together, resulting in a rate that was higher than NYPD’s direct rate. However, Congress specifically limited the reimbursement to protection activities directly and demonstrably associated with any designated residence



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of the President.¹⁰ In conflict with the statute, FEMA reimbursed an averaged indirect rate that included fringe benefit categories that do not increase with overtime labor. FEMA should not accept the cognizant agency's indirect rate when limited by statute.¹¹ By accepting an indirect rate rather than applying a direct rate, FEMA reimbursed NYPD for health insurance and supplemental welfare costs when those were not actual costs of NYPD's protection activities.

Additionally, FEMA's assertion that the appropriation acts do not define the word "extraordinary" is unfounded. The statutes clearly state that the appropriated funding is to be used for costs in excess of normal and typical law enforcement operations and directly attributable to the provision of protection described in the act. FEMA's interpretation that "extraordinary" permits it to reimburse NYPD for health insurance and supplemental welfare when they were not actual costs of NYPD's law enforcement protection activities reimbursable under the PRPA grant program is in conflict with the language from the appropriations acts. As a result, FEMA's reimbursement of these costs is neither reasonable nor allowable.

Appendix B contains a copy of FEMA's response in its entirety. FEMA also provided technical comments to our report in a separate document. We reviewed the technical comments and made changes to the report where appropriate.

FEMA's Comments to Recommendation 1: Non-concur. FEMA reiterated its position that it is appropriate to use a cognizant agency rate and discussed its efforts to obtain more information about NYPD's indirect rate from the cognizant agency and NYPD after receiving a copy of our draft report. It also asserted that the term "extraordinary" is ambiguous, and therefore FEMA has authority to interpret "extraordinary" to allow health and supplemental welfare benefits when required by law and under a negotiated and approved indirect cost rate agreement.

OIG Analysis of FEMA's Comments: OIG considers this recommendation open and unresolved. It will remain open until FEMA provides documentation that it has recovered the costs reimbursed for an indirect cost rate.

FEMA's Comments to Recommendation 2: Concur. FEMA stated that GPD will develop guidance for a unified approach, as it is not possible to have the same allowable and non-allowable categories for all grant programs. FEMA

¹⁰ Public Law No. 115-31, *Consolidated Appropriations Act, 2017, Division F – Department of Homeland Security Appropriations Act, 2017*, Title V, Section 544(a); Public Law No. 115-141, *Consolidated Appropriations Act, 2018, Division F – Department of Homeland Security Appropriations Act, 2018*, Title V, Section 534(a).

¹¹ 2 C.F.R. Part 200, Appendix V, Section F, *Negotiation and Approval of Central Service Plans*. The appropriation acts are statutes that specify FEMA should reimburse only for direct costs.



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plans to provide basic guidance to ascertain whether there is a cognizant agency approved rate and whether the grant recipient is appropriately applying the rate. If there is not a cognizant agency approved rate, then GPD will provide guidance on approaching a review of the rate. FEMA also stated that the C.F.R. does not require categorical exclusion of certain fringe benefits, and that allowability may depend on the methodology of the recipient's calculation. Estimated Completion Date (ECD): December 31, 2021.

OIG Analysis of FEMA's Comments: FEMA's proposed actions would provide guidance instructing staff to accept a cognizant agency rate, but would not illustrate how it will incorporate guidance to staff for reviewing fringe benefit categories when the use of cognizant agency rate may be limited or inappropriate, as it was for NYPD. The recommendation will remain open and unresolved until FEMA provides additional information about its guidance to better ensure the cognizant agency rate and other applications of overtime fringe are applied correctly in future awards.

FEMA's Comments to Recommendation 3: Concur. FEMA has already established a process for Secret Service to validate a consolidated list of applicants' submitted dates associated with protecting each presidential residence. GPD plans to draft a Memorandum of Understanding for Secret Service's review, input, and coordination. ECD: December 31, 2021.

OIG Analysis of FEMA's Comments: FEMA's proposed actions are responsive to the recommendation. The recommendation will remain open and resolved until FEMA provides documentation of its finalized Memorandum of Understanding.

FEMA's Comments to Recommendation 4: Concur. FEMA stated it has improved and matured its processes for awarding and managing PRPA grant awards, including a refined review process achieved through realignment and consolidation of programmatic and financial review responsibilities. Beginning in FY 2019, FEMA also modified the application review process to require staff to follow its grants manual and obtain supervisory and legal sufficiency reviews before approval and award. FEMA stated that it will be able to document systematic governance and oversight to support effective management of the PRPA grant program, including statistically relevant sampling at a 95 percent confidence level. ECD: April 30, 2021.

OIG Analysis of FEMA's Comments: FEMA's proposed actions are responsive to the recommendation. The recommendation will remain open and resolved until FEMA provides documentation for and implementation of its realignment and consolidated programmatic and review responsibilities, PRPA application review process, and internal controls.



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Appendix A

Objective, Scope, and Methodology

The Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

Our objective was to determine whether FEMA ensured state and local law enforcement agencies accounted for and expended FEMA's grant for protection of the President's non-governmental residences according to Federal regulations and FEMA and Secret Service guidelines. To accomplish our objective, we reviewed Federal laws and regulations as well as DHS and FEMA policies and guidance associated with the PRPA grant program. Specifically, we reviewed:

- Public Law No. 115-31, *Consolidated Appropriations Act, 2017*, Title V, Section 544(a)
- Public Law No. 115-141, *Consolidated Appropriations Act, 2018*, Title V, Section 534(a)
- 18 United States Code (U.S.C.) Section 1752 – *Designation of Protected Premises*
- 2 C.F.R. Part 200.403-405 *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*
- DHS NOFOs for FY 2017 and FY 2018 PRPA Grants
- Office for Domestic Preparedness Information Bulletin No. 161, April 25, 2005
- FEMA Manual 205-0-1, *Grants Management*

We interviewed FEMA personnel from GPD and the Office of Policy and Program Analysis. Additionally, we interviewed officials at Secret Service's Office of the Chief Counsel, Office of Protective Operations, and regional locations. We conducted observations at the President's non-governmental residences at Trump Tower and Mar-a-Lago. We also interviewed representatives from NYPD, New York City Office of Management and Budget, and Palm Beach County Sheriff's Office (PBCSO).

We reviewed all grantee applications for FYs 2017 and 2018 for completeness. We validated the grantees' supporting documentation against the grantees' reimbursements recorded by USAspending.gov for FYs 2017 and 2018.

Additionally, we performed testing to determine whether claimed costs from NYPD and PBCSO were allowable for reimbursement, as these two grantees made up 97 percent of the PRPA grant awards for FYs 2017 and 2018. Specifically, we conducted a statistical sample of transactions from NYPD's



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combined FY 2017 and FY 2018 reimbursement requests, and a statistical sample of PBSCO's combined FY 2017 and FY 2018 reimbursement requests. Both samples were random and had a 95 percent confidence level and 5 percent margin of error rate. We validated the detailed budget spreadsheets that NYPD and PBCSO provided in their applications by requesting and reviewing supplemental documentation regarding overtime, payroll, and timecard data. We also reviewed GPD's sampling and methodology for testing reimbursements of all grantees' detailed budget spreadsheets. To analyze allocation priorities, we compared travel dates NYPD and PBCSO provided us against dates from Secret Service's Office of Protective Operations.

We conducted this performance audit between July 2019 and June 2020 pursuant to the *Inspector General Act of 1978, as amended*, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.



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Appendix B
FEMA Comments to the Draft Report

U.S. Department of Homeland Security
Washington, DC 20472



FEMA

January 22, 2021

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.
Inspector General

FROM: Cynthia Spishak
Associate Administrator
Office of Policy and Program Analysis

SUBJECT: Management Response to Draft Report: “FEMA Needs to Improve Guidance and Oversight for the Presidential Residence Protection Assistance Grant”
(Project No. 19-047-AUD-FEMA)

CYNTHIA SPISHAK
Digitally signed by CYNTHIA SPISHAK
Date: 2021.01.22 10:10:29 -0500

Thank you for the opportunity to comment on this draft report. The Federal Emergency Management Agency (FEMA) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

The 2017 and 2018 DHS Appropriations Acts¹ require the OIG to audit reimbursements FEMA made to state and local law enforcement through Presidential Residence Protection Assistance (PRPA) grants. FEMA believes, however, that the OIG’s report contains an inaccurate conclusion regarding the New York City Police Department’s (NYPD) expenditure of PRPA grant funds. Specifically, FEMA does not agree with the OIG’s conclusion that FEMA improperly reimbursed the NYPD for \$6.9 million in PRPA overtime (OT) fringe benefit costs by incorrectly allowing the inclusion of health insurance and supplemental welfare.

FEMA’s reimbursement of NYPD expenditures for the amount of OT overhead (OH) requested was allowable, allocable, and reasonable, as confirmed and documented by the U.S. Department of Health and Human Services (HHS) under Title 2, Code of Federal Regulations (CFR) § 200, “Cognizant Agency for Indirect Costs,” on December 16, 2020 as well as the New York Office of Management and Budget (NY OMB), which conducts oversight of NYPD. Further, the appropriations statute for the PRPA Program does not define “extraordinary.” As a result of this ambiguity regarding fringe benefits, FEMA

¹ Public Law No. 115-31, Consolidated Appropriations Act, 2017, Division F – Department of Homeland Security Appropriations Act, 2017, Title V, Section 544; Public Law No. 115-141, Consolidated Appropriations Act, 2018, Division F – Department of Homeland Security Appropriations Act, 2018, Title V, Section 534.



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has the authority to make a reasonable interpretation of one of its enabling statutes. OIG's interpretation should not be substituted for FEMA's.

The draft report contained four recommendations. FEMA concurs with recommendations two, three, and four, and non-concurs with recommendation one. Attached find our detailed response to each recommendation. FEMA previously submitted technical comments addressing several accuracy, contextual, and other issues under a separate cover for OIG's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Attachment



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**Attachment: Response to Recommendations
Contained in Project No. 19-047-AUD-FEMA**

OIG recommended that the Assistant Administrator for FEMA Grant Programs Directorate (GPD):

Recommendation 1: Disallow \$6,936,357 in overstated fringe benefit costs and ensure fringe benefits are properly calculated and applied.

Response: Non-concur. FEMA believes that by using a designated federal agency to negotiate the fringe rates, the NYPD applied an allowable and reasonable methodology to calculate and assign fringe costs to OT hours for awards EMW-2017-GR-00066 and EMW-2018-GR-00068. NYPD evaluated the allowability of the various factors included in the OT OH rate, as well as the calculation. As a result, FEMA concluded that NYPD's billed reimbursable costs for OT OH was allowable, and subsequently calculated and applied fringe benefit costs for the two grants with costs properly. Further, FEMA identified the allowability of these costs in our technical responses provided to the OIG on May 15, 2020.

When the City of New York performed its annual reviews of the NYPD fringe rates, it complied with the "cognizant agency" concept established by 2 CFR § 200.19 Cognizant agency for indirect costs, under which a single Federal agency represents all others in dealing with grantees in common areas. As outlined in 2 CFR § 200.19, which was in effect at the time of these awards, the NYPD's cognizant agency for indirect costs (in this case, HHS) is responsible for reviewing, negotiating and approving cost allocation plans or indirect cost proposals developed under this part on behalf of all federal agencies.

More specifically, as stated in 2 CFR Part 200, Appendix V – Section F, "Negotiation and Approval of Central Service Plans," Section 2 – Review:

"All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the cognizant agency for indirect costs on a timely basis. The cognizant agency for indirect costs will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency for indirect costs."



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Cost allocation plans and negotiated indirect cost rates also can, and do, include fringe benefits, as noted in 2 CFR Part 200, Appendix V Section E, “Documentation Requirements for Submitted Plans,” and Appendix VII Section F.1, “Fringe Benefit Rates.” Similar to the statement above that, once an agreement with the governmental unit is reached, the agreement will be accepted and used by all Federal agencies in the quoted language above, 2 CFR § 200.414 (c), “Federal Agency Acceptance of Negotiated Indirect Cost Rates,” specifically requires federal agencies to accept negotiated rates. There are limited exceptions to this requirement, none of which apply to this situation.

With regard to the PRPA grants in question, and the allowability of health insurance and special welfare benefits in the OT OH rate, HHS reviewed and approved NYPD’s rate calculation each year (most recently, on June 21, 2018 for FY 2019 fringe rates) and viewed NYPD’s approach as reasonable under 2 CFR § 200 requirements. On December 16, 2020 GPD specifically confirmed with HHS that health insurance and special welfare costs are included in the NYPD calculation. The OT OH rates applied are the result of the calculation base (a mathematical perspective), not operational factors. New York City’s fringe rates are calculated with both straight time (ST) and OT in the base (denominator) across every fringe component, including health insurance and welfare benefits.

Prior to fiscal year (FY) 2018, NYPD was under-recovering fringe costs by not requesting the full reimbursement for their OT fringe benefits, which included health insurance and welfare benefits on OT in their calculation. The NY OMB noted in a letter dated December 16, 2020 that from a historical perspective, the FY 2017 and earlier fringe rates were also calculated this way, with both ST and OT in the denominators, and there has been no change to the NYPD fringe benefit methodology for OT OH. In FY 2018, NYPD began charging the full OT fringe rate to the grant, which included health insurance and supplemental welfare benefits. The change, starting with the FY 2018 rates, was not due to a change in calculation methodology, but to align the application of the fully approved OT fringe rate with the calculation methodology.

Further, the appropriations statute for the PRPA grant program does not define “extraordinary.” As a result of this ambiguity regarding fringe benefits, FEMA has the authority to make a reasonable interpretation of one of its enabling statutes. OIG’s interpretation should not be substituted for FEMA’s.

FEMA interprets the PRPA grant authority to permit reimbursing healthcare and supplemental welfare benefits when the recipient is: 1) required to pay these benefits under state law, local law, or a pension arrangement; and 2) entitled to charge the costs to an award per the recipient’s negotiated and approved indirect cost rate agreement. In this case, the NYPD is required to pay these fringe benefits per its pension agreement,



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and the NYPD's negotiated agreement allows these fringe benefits even if those costs do not change with overtime personnel costs. Also, the PRPA Notices of Funding Opportunity specify that "overtime compensation rate" and "fringe benefits" are allowable.

Accordingly, FEMA requests that the OIG consider this recommendation resolved and closed.

Recommendation 2: Develop guidance for determining whether the components of overtime fringe benefits are in accordance with applicable laws and regulations.

Response: Concur. GPD will develop guidance for a unified basic approach to reviewing overhead rates and their eligibility for reimbursement. The scope and variety of FEMA's grant programs make it impossible to have the same allowable/non-allowable categories for all programs. Taking into account 2 CFR § 200.102, "Exceptions," FEMA cannot promulgate all-encompassing, overarching guidance stricter than 2 CFR § 200 for an entire class of award. Additionally, all-encompassing guidance would not be able to address the nuances of program specific authorities that vary across FEMA's more than 40 grant programs. Given the vast array of grant programs, the basic guidance will be to ascertain whether there is a cognizant agency approved rate and whether the recipient is appropriately applying the rate. In the absence of an approved cognizant agency rate, GPD will provide basic guidance on approaching an overhead rate review.

Further, the regulations at 2 CFR § 200 do not require categorial exclusion of certain fringe benefits. Per 2 CFR § 200.431, "Compensation—fringe benefits," because categorizing allowable versus unallowable OT fringe benefits is not a requirement of 2 CFR § 200, creating an across-the-board categorial exclusion would be stricter than 2 CFR § 200. Additionally, the allowability at times depends on the methodology of the recipient in calculating the OH rates, as evidenced by NYPD's calculation of OT OH. Estimated Completion Date (ECD): December 31, 2021.

Recommendation 3: Coordinate with Secret Service to develop a Memorandum of Understanding to validate allocation priorities specific to the Presidential Residence Protection Assistance grant.

Response: Concur. GPD agrees a validation process with U.S. Secret Service (USSS) is necessary. Beginning with the FY 2019 PRPA grant awards, FEMA established a process whereby GPD provides USSS all of the applicants' budget spreadsheets along with a consolidated list of priority-based dates associated with each of the presidential residences for validation. Moreover, GPD will draft a Memorandum of Understanding for USSS's review, input and coordination to include FEMA's new validation process. ECD: December 31, 2021.



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Recommendation 4: Develop and implement internal controls for managing the Presidential Residence Protection Assistance grant to include at a minimum:

- integrating staff with subject matter expertise to conduct complete review of all required documentation and develop a consistent sampling methodology; and
- establishing operational guidance specific to the grant, incorporating supervisory review of staff evaluations of grant submissions to ensure compliance.

Response: Concur. Since FY 2018, FEMA improved and matured its processes for awarding and managing PRPA grant awards, and implemented a refined review process by realigning and consolidating both the programmatic and financial review responsibilities under GPD's Office of Grants Administration. Beginning in FY 2019, FEMA's GPD modified the PRPA application review process to strengthen coordination between programmatic and grants management staff and to require staff to follow the Standard Application Review Process for non-disaster grants required by the FEMA Manual 205-0-1, Grants Management (Grants Manual). This process also requires a supervisory and legal sufficiency review before approval and award.

In addition to the FEMA Grants Manual, GPD uses a series of internal controls specific to the PRPA grant awards, including a statistically relevant sampling process that yields a 95 percent confidence level. As a result of these changes, GPD will be able to document a systematic governance and oversight process that supports effective management of all aspects of the PRPA grant program. ECD: April 30, 2021.



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Appendix C
NYPD's Fringe Benefit Rates Applied in Its PRPA Grant
Application Package

Fringe Benefit Rate Cost Category	Overtime Fringe Benefit Rates for City FY 2017 ^a		Fringe Benefit Rates for City FY 2018		Fringe Benefit Rates for City FY 2019		Allowable Overtime Fringe Benefit Cost
	Civilian	Police Dept.	Civilian	Police Dept.	Civilian	Police Dept.	
Pensions	15.59%	59.71%	17.29%	61.54%	15.68%	57.10%	Yes
Social Security	7.25%	7.25%	7.22%	7.22%	7.15%	7.15%	Yes
Health Insurance			19.60%	25.63%	19.41%	26.07%	No
Supplemental Employee Welfare Benefits			4.50%	3.25%	4.14%	3.57%	No
Worker's Compensation	1.07%	0.62%	1.02%	0.59%	1.07%	0.53%	Yes
Unemployment Insurance	0.14%	0.14%	0.14%	0.14%	0.13%	0.13%	Yes
Metropolitan Transportation Authority (MTA) Payroll Tax	0.35%	0.35%	0.34%	0.34%	0.33%	0.33%	Yes
Total Rate	24.40%	68.07%	50.11%	98.71%	47.91%	94.88%	

Source: DHS OIG analysis of NYPD data

^a New York City's fiscal year is July 1 to June 30.



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Appendix D
Grantees Audited and Questioned Costs

Grantee	Grant Number	Award Amount	Questioned Cost
Palm Beach County Sheriff's Office	EMW-2017-GR-00061	\$ 3,293,988	\$ 0
Township of Bedminster	EMW-2017-GR-00064	54,077	0
Town of Palm Beach	EMW-2017-GR-00065	71,270	0
New York City Police Department	EMW-2017-GR-00066	36,427,909	2,354,909
County of Somerset	EMW-2017-GR-00067	579,088	0
West Palm Beach Police Department	EMW-2017-GR-00068	63,164	0
Town of Morristown	EMW-2017-GR-00069	30,722	0
New Jersey Department of Law & Public Safety	EMW-2017-GR-00070	281,822	0
Broward County Sheriff's Office	EMW-2017-GR-00071	54,916	0
Township of Bedminster	EMW-2018-GR-00056	50,050	0
Palm Beach County Sheriff's Office	EMW-2018-GR-00059	5,623,392	0
County of Somerset	EMW-2018-GR-00060	509,646	0
Town of Hanover	EMW-2018-GR-00061	10,123	0
Town of Morristown	EMW-2018-GR-00062	30,854	0
County of Morris	EMW-2018-GR-00063	55,938	0
Town of Palm Beach	EMW-2018-GR-00065	57,614	0
New Jersey Department of Law & Public Safety	EMW-2018-GR-00066	186,683	0
West Palm Beach Police Department	EMW-2018-GR-00067	111,063	0
New York City Police Department	EMW-2018-GR-00068	31,124,825	4,581,448
	Total	\$78,617,144	\$6,936,357

Source: DHS OIG analysis of FEMA and grantee data.



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Appendix E
Potential Monetary Benefits

Rec. No.	Type of Potential Monetary Benefit	Amount
1	Questioned Costs – Ineligible	\$ 6,936,357
	Questioned Costs – Unsupported	0
	Funds Put to Better Use (Cost Avoidance)	0
Total		\$6,936,357

Source: OIG analysis of report findings



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Appendix F
DHS OIG Prior Audit Reports of Unallowable Fringe Benefits

FEMA reimbursed NYPD for unallowable fringe benefit costs under its FY 2017 and FY 2018 PRPA grants. Since 2011, DHS OIG has issued five other reports identifying instances where FEMA reimbursed unallowable fringe benefit costs.

Report number	Report title	Report date
DD-11-08	<i>City of Slidell, Louisiana</i>	February 3, 2011
DA-12-08	<i>FEMA Public Assistance Grant Funds Awarded to the Kentucky National Guard</i>	February, 17, 2012
DA-13-08	<i>FEMA Should Recover \$470,244 of Public Assistance Grant Funds Awarded to the City of Lake Worth, Florida - Hurricanes Frances and Jeanne</i>	December 4, 2012
OIG-15-104-D	<i>FEMA Should Recover \$337,135 of Ineligible or Unused Grant Funds Awarded to the Port of Tillamook Bay, Oregon</i>	June 15, 2015
OIG-17-17-D	<i>Omaha Public Power District in Nebraska Generally Accounted for and Expended FEMA Grant Funds Properly</i>	January 4, 2017



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Appendix G
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Appendix H
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